

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 125 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

BHIKHABHAI SOMABHAI SAGAR

Versus

STATE OF GUJARAT

Appearance:

MR JV JAPEE for Petitioner

MR. S.P. Dave, ADDL. PUBLIC PROSECUTOR for
Respondent No. 1

MR PT PATEL for Respondent No. 2

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 22/07/1999

ORAL JUDGEMENT :

Heard Shri J.V. Japee, learned advocate for the petitioner, Shri S.P. Dave, learned APP for respondent no.1 and Shri P.T. Patel, learned advocate for respondent no.2.

2. Rule. Shri S.P. Dave, learned APP and Shri P.T. Patel, learned advocate for respondents nos.1 and 2

respectively waive service of the rule.

3. This Revision Application arises out of the judgment and order rendered by the learned Additional Sessions, Banaskantha at Himatnagar in Criminal Appeal No.16 of 1994 which arose out of the judgment and order rendered in Criminal Case No.33 of 1992 by the learned Judicial Magistrate (First Class), Khedbrahma.

4. The facts, in narrow compass, are that the present revisioner Bhikhabhai Somabhai Sagar issued a cheque dated 31.10.1991 for Rs.40,350/- in favour of respondent no.2, Rajendrakumar Rameshchandra Upadhyay. The cheque was presented on 25.11.1991 and the same was returned by the Bank with an endorsement "refer to drawer". Respondent no.2 was intimated of dishonour of the cheque by letter dated 4.12.1991 whereupon on 20.12.1991 he gave notice to the revisioner under sec.138 of the Negotiable Instruments Act ("the Act" for brevity). After awaiting for 15 days he lodged a complaint before the learned Judicial Magistrate (First Class), Khedbrahma under sec.138 of the Act. The learned Magistrate after inquiring and recording the evidence came to the conclusion that the complainant was able to establish guilt of the accused, the revisioner and after holding him guilty sentenced him to undergo simple imprisonment for one year and to pay a fine of Rs.5,000/or to undergo further imprisonment for 60 days in default in payment of fine. This judgment and order was carried in appeal before the Sessions Court, Sabarkantha at Himatnagar being Criminal Appeal No.16 of 1994 and the learned Additional Sessions Judge by his judgment and order dated 10.3.1998 dismissed the appeal.

5. The main contention raised by Shri Japee, learned advocate is that both the courts below have not taken into consideration the fact that the notice was beyond limitation. The intimation of dishonour of cheque was served on respondent no.2, the complainant on 4.12.1991 and the notice was issued on 20.12.1991 and therefore, it was 15 days beyond limitation. He submitted that both the lower courts have accepted the version that the intimation of dishonour was received by the complainant on 5.12.1991. Shri Japee, learned advocate in order to substantiate his argument has taken this Court to the evidence of Kishorbhai Govabhai Patel, who was examined at exh.39 by the trial court. He has stated that the intimation was sent to the complainant by letter dated 4.12.1991, which was received by the complainant on 5.12.1991. However, during cross examination he admits that such intimations are sent as expeditiously as

possible. In the instant case it was sent by letter dated 4.12.1991, through Peon and in the Peon Book/ Despatch Book, an entry was made on 4.12.1991. He admits that ordinarily the post is delivered on the very day and the recipient ordinarily do not endorse the date of receipt. In the instant case although the date of receipt is mentioned as 5.12.1991 he admits that the ink and pen with which the date is written differs from the ink and pen of the signature. Shri Japee, learned advocate, therefore, urged that this should be taken as sufficient material to raise reasonable doubt about some manipulation in the dates and if that is considered the notice and the proceedings thereafter would get vitiated. The conviction, therefore, may be set aside allowing the Revision Application.

6. Shri Patel, learned advocate for respondent no.2 has tried to support the judgments of both the courts below.

7. Having considered the rival contentions and in the light of the evidence on record, the entire proceedings would stand good only if the receipt of intimation is accepted to be on 5.12.1991. But that in itself is a matter of doubt because the date is entered with a different pen and ink which should make this entry doubtful. The other circumstance indicates that the post is delivered through Peon on the same day. The post was entered into the Peon Book on 4.12.1991 and therefore, ordinarily it can be presumed that it was delivered on that day. The Peon, who delivered the post has not been examined. Under the circumstances the Revision Application must succeed. The whole case of the complainant slips under a cloud of doubt resulting into failure of serving the notice within the limitation and therefore, the judgment and order rendered by the both the courts below need to be interfered with. Hence the order.

8. The Revision Application is allowed. The judgment and order of the learned Judicial Magistrate (First Class), Khedbrahma in Criminal Case No.33 of 1992, which is confirmed in Criminal Appeal No.16 of 1994 by the learned Additional Sessions Judge, Sabarkantha at Himatnagar, is hereby set aside. The bail bonds will stand cancelled. Rule is made absolute accordingly.

9. At this stage, Shri Japee states that the parties have, outside the Court, agreed to settle their disputes and the revisioner agrees to pay Rs.1,00,000/- (Rupees one lakh only) to respondent no.2 out of which he has

already paid Rs.60,000/- and the remaining amount of Rs.40,000/- will be paid by him by the end of October 1999. The Purshis to that effect is also produced by him which is taken on record.

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